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December 14, 2007

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

**Re: Opposition to Request for Waiver of 47 C.F.R. § 90.545  
Filed by New York State Office for Technology – Statewide Wireless Network  
WT Docket No. 06-18**

Dear Ms. Dortch:

Mountain Broadcasting Corporation (“Mountain”), the licensee of WMBC-TV, Channel 63, Newton, NJ, by its counsel, hereby reiterates its opposition to the waiver request (the “Waiver Request”) filed by the New York State Office for Technology – Statewide Wireless Network (the “State”) in the above-referenced docket. As explained in the attached Technical Statement of du Treil, Lundin & Rackley, Inc. (the “Technical Statement”), the Waiver Request, including the “Additional Comments” submitted by the State on September 14, 2007, cannot be granted because the methodology the State has utilized to predict the extent of interference to adjacent-channel television stations has not been tested by any party and thus its accuracy cannot be verified.

By way of background, WMBC-TV is not affiliated with any broadcast network, but nevertheless provides hundreds of thousands of viewers in the New York DMA with a significant source of programming offered in numerous foreign languages, as well as wholesome, uplifting programming consistent with positive family values. In particular, WMBC-TV broadcasts a wide variety of news, sports and entertainment programming every day from Korea, China, Japan, Italy, India and Austria to serve these populous ethnic audiences. WMBC-TV also produces local news broadcasts in both English and Korean five nights per week. Such a diverse mix of programming is very likely not available from any other single program provider in the New York DMA.

The original Waiver Request sought a waiver of Section 90.545 of the Commission’s rules to construct 99 land mobile base stations within WMBC-TV’s licensed service area prior to the end of the DTV transition scheduled for February 17, 2009. The base stations would operate

on certain frequencies (between 774 – 776 MHz) that are reserved to first-adjacent Channel 64. Mountain previously objected to the Waiver Request because it is objectively impossible to verify whether the State's complex engineering formula purportedly supporting the Waiver Request proves that little or no interference would result to WMBC-TV, whose 6 MHz analog allocation is located between 764 – 770 MHz.

By the Additional Comments, the State has requested a modification of its Waiver Request, in order to allow operation of its base stations on the frequencies between 773 – 775 MHz, *i.e.*, 1 MHz closer to the upper edge of WMBC-TV's allotment than previously suggested. As explained in the Technical Statement, due to the reduced frequency separation between WMBC-TV and the State's proposed base stations, there now is a greater likelihood that actual interference to WMBC-TV's viewers would result if the Waiver Request were adopted. However, the State still has not provided any documentation necessary to support the accuracy of its engineering methodology, and the Additional Comments did not include any proof that reducing the separation to the upper edge of WMBC-TV's allotted frequencies would not harm receipt of WMBC-TV's signal. Indeed, the State has not proffered even one instance where its interference-prediction methodology has been adopted by the Commission. Instead, the State has essentially asked that the Commission simply trust that its unreported calculations are correct, and that its reported conclusions be accepted, without additional inquiry. Mountain has previously asked the Commission to open what another commenter in this proceeding has termed the "black box," so that all interested parties, including the Commission's own engineers, can determine the reliability of the State's calculations.

At the very least, the Commission should order the State to conduct thorough testing before granting the Waiver Request, and such grant should contain specific conditions designed to avoid even the minimum amount of disruption to WMBC-TV and its viewers, including that the State: (a) *promptly* correct, at its sole expense, any cases of actual interference to the reception of WMBC-TV at all locations within the WMBC-TV Grade B contour and at all cable television headend locations where the WMBC-TV signal is received over the air;<sup>1</sup> (b) be prohibited from operating mobile, portable and control stations within the 764-776 MHz band; (c) utilize only those frequencies that are at least 4-6 MHz from the upper edge of WMBC-TV's Channel 63 6 MHz allocation (*i.e.*, no lower than 774 MHz); (d) provide the Commission and Mountain with a revised interference analysis based on the State's *final* system design parameters, and afford Mountain the opportunity for review and comment prior to implementation;<sup>2</sup> (e) provide notice to potentially affected WMBC-TV viewers, advising them

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<sup>1</sup> Such a requirement would not impose an undue burden on the State, since as the Commission is undoubtedly aware, it will likely cost the State in the *tens of millions, if not hundreds of millions, of dollars* to construct its proposed 99 base stations, while the cost of the filtering equipment that the State would have to acquire in order to resolve new complaints of interference following the implementation of its proposed system is approximately *ten dollars* each.

<sup>2</sup> The State has already agreed to this condition. See State's Reply Comments in this proceeding, at 7.

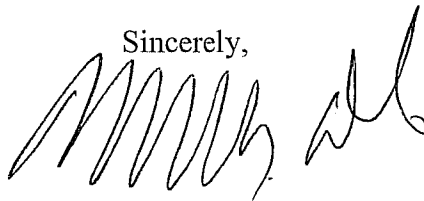
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that their reception of WMBC-TV could be affected by the State's operations and provide them with contact information to obtain resolution of any interference that they may experience from the State's operations; (f) acknowledge that any unresolved interference could result in the suspension of the State's operations; and (g) accept all interference it may receive from WMBC-TV in whatever manner so long as the station operates on Channel 63.

Mountain's own studies have revealed that many of its viewers receive WMBC-TV's signal over-the-air on Channel 63. Those viewers are entitled to continue receiving WMBC-TV programming on that channel – without destructive interference – until the end of the transition to DTV. Unless and until the State provides Mountain and the Commission with sufficient additional information to allow an independent review of the State's interference prediction methodology, Mountain cannot support the State's Waiver Request, and the Commission should not grant it.

Should you have any questions regarding this matter, please contact the undersigned directly.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark B. Denbo', with a stylized, cursive script.

Mark B. Denbo  
*Counsel to Mountain Broadcasting Corporation*

cc: Robert Gurss, Counsel for the State of New York  
Monica Desai, Chief, Media Bureau, FCC  
Barbara Kreisman, Chief, Video Division, Media Bureau, FCC  
Julius Knapp, Chief, Office of Engineering and Technology, FCC  
Derek Poarch, Chief, Public Safety and Homeland Security Bureau, FCC  
Fred Campbell, Chief, Wireless Telecommunications Bureau, FCC  
Scott Flick, Counsel for WFUT-TV

TECHNICAL STATEMENT  
WMBC-TV, CHANNEL 63, NEWTON, NEW JERSEY  
IN RESPONSE TO THE PROPOSED MODIFICATION OF THE  
STATE OF NEW YORK'S APPLICATION  
FOR LAND-MOBILE RADIO OPERATION IN DOWNSTATE NEW YORK  
WT DOCKET NO. 06-18

This technical statement has been prepared on behalf of television (TV) station WMBC-TV, which is licensed for operation on TV Channel 63 at Newton, New Jersey (BMLCT-20011016AAQ). In October 2005, the State of New York Office for Technology – Statewide Wireless Network (herein “NY STATE”), filed an application to implement a new land-mobile system employing 99 base stations located in 12 counties in downstate New York (see WT Docket No. 06-18). The original proposal involved base station transmissions on frequencies between 774 MHz and 776 MHz (within TV Channel 64), which are in the upper adjacent channel to WMBC-TV’s licensed operations on Channel 63. Since the proposal did not comply with the adjacent-channel protection criteria of Section 90.545 with respect to WMBC-TV, NY STATE requested that the Commission waive the requirements of Section 90.545. WMBC-TV previously has registered its objection to NY STATE’s proposal, primarily because the purely theoretical interference prediction methodology employed by NYSTATE is not testable by WMBC-TV nor is it supported by actual measurement data. Thus, WMBC-TV is prevented from verifying its accuracy.

By means of a letter dated September 14, 2007, NY STATE filed a request with the Commission to modify the proposed operations of its aforementioned land-mobile system to bring it into compliance with the new 700 MHz band-plan adopted in the Second Report and Order in WT Docket No. 07-166.<sup>1</sup> This modification will result

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<sup>1</sup> In the Matter of Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, Second Report and Order, WT Docket No. 07-166. Adopted July 31, 2007; released August 10, 2007.

in lowering all base station transmitting frequencies by 1 MHz, so that the base stations are now proposed to transmit between 773 MHz and 775 MHz.

It is noted that this change brings the proposed NY STATE base station transmissions 1 MHz closer in frequency to WMBC-TV's transmissions on channel 63. In its September 14 letter, NY STATE continues to rely only on the theoretical interference study it previously provided as justification for its waiver request. Thus, WMBC-TV still has no assurance as to the accuracy of NY STATE's predictions with respect to interference to reception of WMBC-TV. In all likelihood, due to the reduced frequency separation between WMBC-TV and NY STATE's base station transmissions, the potential for actual interference to reception of WMBC-TV is increased. Therefore, WMBC-TV continues to object to the NY STATE proposal.



David E. Dickmann

du Treil, Lundin & Rackley, Inc.  
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December 10, 2007